

HOUSE BILL REPORT

2SHB 1652

As Passed House:
January 23, 2012

Title: An act relating to electronic impersonation.

Brief Description: Regarding electronic impersonation.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Frockt, Kenney, Reykdal, Rolfes, Probst, Goodman, Maxwell, McCoy, Jacks, Jinkins, Ryu, Kagi, Ladenburg, Stanford, Hasegawa, Fitzgibbon, Blake, Billig, Roberts, Clibborn, Ormsby, Moscoso, Hudgins and Liias).

Brief History:

Committee Activity:

Judiciary: 1/9/12, 1/12/12 [DP2S].

Floor Activity:

Passed House: 2/26/11, 97-0.

Floor Activity:

Passed House: 1/23/12, 95-0.

Brief Summary of Second Substitute Bill

- Establishes a civil cause of action allowing a person injured by electronic impersonation to seek damages.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Trudes Tango (786-7384).

Background:

Invasion of Privacy.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Washington courts have recognized civil causes of action based upon an invasion of privacy in some contexts. There are generally four distinct types of invasion of privacy claims: (1) unwarranted intrusion into a person's private activities or affairs; (2) appropriation or exploitation of a person's name, likeness, or personality; (3) public disclosure of private facts; and (4) placing another in a false light that is highly offensive.

Generally, these types of invasion of privacy actions are concerned with a person's interest to be left alone. In contrast, a defamation action is intended to protect a person against dissemination of false information that harms the person's reputation.

Personality Rights Statute.

In Washington there is also a statutory cause of action to protect the use of a person's name or likeness in certain contexts. The personality rights statute grants every person a property right in the use of his or her name or likeness. The statute allows an injured person to sue for damages or an injunction if his or her name or likeness is used for commercial purposes without the person's consent. The statute contains exceptions to protect cultural, educational, artistic, and other uses.

Parental Liability.

Under Washington's parental liability statute, if a child under the age of 18 willfully and maliciously inflicts personal injury on another person, the parents with whom the child is living will be liable to the injured person in a civil action in an amount not to exceed \$5,000. This statute does not limit recovery against parents for their own negligence.

Laws in Other States.

In 2010 California enacted legislation making electronic impersonation a crime and a civil cause of action. Any person who knowingly and without consent credibly impersonates another actual person through or on an Internet website or by other electronic means to harm, intimidate, threaten, or defraud is guilty of a misdemeanor. A plaintiff may sue for compensatory damages and injunctive or other equitable relief. New York has enacted legislation criminalizing electronic impersonation in which a person communicates over the Internet with intent to injure or defraud another.

Summary of Second Substitute Bill:

A civil cause of action is established for electronic impersonation in certain contexts. A person may be liable in a civil action for damages based on a claim of invasion of privacy when:

- the person intentionally impersonates another actual person on a social networking website or online bulletin board without the actual person's consent;
- the person intended to deceive or mislead for the purpose of harassing, threatening, intimidating, humiliating, or defrauding another; and
- the impersonation was the proximate cause of injury to the actual person. Injury may include injury to reputation or humiliation, injury to professional or financial standing, or physical harm.

"Impersonates" means using an actual person's name or likeness to create an impersonation that another would reasonably believe or did reasonably believe was or is the actual person being impersonated.

The actual person who was impersonated may seek actual damages, injunctive relief, and declaratory relief. The court may award the prevailing party costs and reasonable attorneys' fees. A parent's liability for the acts of a minor child is limited under the current parental liability statute.

The legislation does not apply when the impersonation was:

- for use that would violate the personality rights statutes or would fall under the exception to the personality rights statutes (for matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including works of art, commentary, satire, and parody);
- insignificant, de minimis, or incidental use; or
- performed by a law enforcement agency as part of a lawful criminal investigation.

The legislation may not be construed to impose any liability on a social networking website, online bulletin board, Internet service provider, interactive computer service, computer hardware or software provider, or website operator or administrator or its employees, unless the provider, operator, administrator, or employee is the person doing the impersonation.

The legislation does not limit any other civil cause of action available to a person under statute or common law or any criminal prosecution.

"Social networking website" means a website that allows a user to create an account or profile for the purposes of, among other things, connecting the user's account or profile to other users' accounts or profiles. A blog is not a social networking website. "Online bulletin board" means a website that is designed specifically for Internet users to post and respond to online classified advertisements that are viewable by other Internet users.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was heard last year and passed the House of Representatives. It is not clear how current law applies to the new online environment. This bill addresses these emerging issues. The intent is to provide a different remedy from defamation. The bill is narrowly targeted and provides the right remedy for the harm. Jurisdictional issues in these cases would be similar to cases involving online spam. The current statute on long arm jurisdiction would apply.

(Opposed) None.

Persons Testifying: Senator Frockt, prime sponsor; and Lew McMurrin, Washington Technology Industry Association.

Persons Signed In To Testify But Not Testifying: None.